

DOCKET FILE COPY ORIGINAL
PEPPER & CORAZZINI
L. L. P.

VINCENT A. PEPPER
ROBERT F. CORAZZINI
PETER GUTMANN
JOHN F. GARZIGLIA
NEAL J. FRIEDMAN
ELLEN S. MANDELL
HOWARD J. BARR
MICHAEL J. LEHMKUHL *
SUZANNE C. SPINK *
MICHAEL H. SHACTER
KEVIN L. SIEBERT *
PATRICIA M. CHUH

ATTORNEYS AT LAW
1776 K STREET, NORTHWEST, SUITE 200
WASHINGTON, D. C. 20006
(202) 296-0600

GREGG P. SKALL
E. THEODORE MALLYCK
OF COUNSEL
FREDERICK W. FORD
1909-1986

TELECOPIER (202) 296-5572
INTERNET PEPCOR@COMMLAW.COM
WEB SITE HTTP://WWW.COMMLAW.COM

RECEIVED

JUL 25 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 25, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

**Re: Amendment of Section 73.202(b),
FM Table of Allotments
Rose Hill, Trenton, Aurora, and Ocracoke, NC
MM Docket No. 95-88**

Dear Mr. Caton:

Transmitted herewith on behalf of Conner Media Corporation, the licensee of WBSY(FM), Rose Hill, North Carolina, is the original plus four copies of its Answer To Response To Supplement To Petition For Reconsideration in the above-referenced proceeding. This submission is respectfully directed to the Chief, Allocations Branch, Policy and Rules Division.

A separate request for leave to file this pleading is being submitted simultaneously herewith under separate cover.

Please direct any questions or correspondence in connection with this matter directly to this office.

Very truly yours,


Ellen S. Mandell

Enclosure
cc (w/encl.): See Attached Service List

No. of Copies rec'd
List A B C D E

014

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUL 25 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	MM Docket No. 95-88
)	
Amendment of Section 73.202(b),)	RM-8641
Table of Allotments,)	RM-8688
FM Broadcast Stations)	RM-8689
(Rose Hill, Trenton, Aurora,)	
and Ocracoke, North Carolina))	

To: Chief, Allocations Branch
Policy and Rules Division

**ANSWER TO MOTION FOR LEAVE TO FILE RESPONSE AND
RESPONSE TO SUPPLEMENT TO PETITION FOR RECONSIDERATION**

Conner Media Corporation ("CMC"), the licensee of WBSY(FM), Rose Hill, North Carolina, by its attorneys, hereby answers the "Request For Leave To File Response and Response To Supplement To Petition For Reconsideration" ("Response") filed on July 9, 1997 by Bruce S. Cotton, who has not previously appeared in this proceeding. A separate request for leave to file this Answer is being filed simultaneously herewith under separate cover.

In support hereof, the following is respectfully shown:

1. On July 3, 1997, CMC submitted a "Supplement To Petition For Reconsideration" ("Supplement") and simultaneous motion for leave to file the Supplement ("Motion"), to promptly place on record a material letter from the Audio Services Division, dated June 27, 1997 ("Cancellation Letter"), regarding a highly relevant matter. Specifically, the Cancellation Letter denied the Form 307 application (FCC File No. BMPH-970113JA) of Ocracoke Broadcasters ("OB") to extend the construction permit for unbuilt FM station WAHL, Channel 224C1, Ocracoke, North Carolina (File No. BMPH-950728IC), canceled the WAHL construction

permit, and deleted the WAHL call sign. The staff's decision in the instant proceeding, Rose Hill, Trenton, Aurora, and Ocracoke, North Carolina ("R&O"), 11 FCC Rcd 21223 (Chief, Alloc. Br., 1996) ("Staff Decision"), relied in part on a finding that the WAHL permit blocked CMC's proposal to allot Channel 221A in lieu of Channel 283A at Aurora, North Carolina. As the Cancellation Letter has eradicated an essential premise of the Staff Decision, CMC accordingly requested notice of the Cancellation Letter in the instant proceeding.

2. By his Response, Cotton appears for the first time in the instant proceeding. Cotton identifies himself as the "proposed assignee" of the WAHL(FM) construction permit. However, Cotton shows no present interest that would warrant his participation in the instant matter at this juncture. At most, he has an unripe contingent future interest in the unlikely event the extinguished WAHL permit is reinstated and permitted to be assigned.

3. Nor does Cotton show that his participation might somehow aid in the resolution of this long-pending proceeding, or otherwise benefit the public interest. Cotton has shown only a private interest in purchasing the permit for the unbuilt station, should it be reinstated.

4. CMC respectfully submits that under the foregoing circumstances, Cotton has failed to demonstrate the required interest in this proceeding to justify his request for pleading privileges.

5. In any event, the substantive matters raised by Cotton are without merit. Cotton's observation that the Cancellation Letter is not yet "final" is specious. Pursuant to Rule Section 1.102(b), the Cancellation Letter presently is in full force and effect. See also WEAM Radio, Inc., 58 RR 2d 141 (1985). The cancellation of the WAHL permit is presently operative, notwithstanding that the period for review is still open.

6. Cotton's conjecture that a petition for reconsideration or application for review of the Cancellation Letter might be filed is purely speculative and would not automatically stay the effect of the Cancellation Letter in any event. Houston Mobilfone, Inc., 52 FCC 2d 1009, 1012 (1975).

7. Contrary to Cotton's assertions, the allotment coordinates for Channel 224C1 at Ocracoke (which were adopted in the context of the one-step upgrade application underlying WAHL's now-canceled construction permit) should pose no bar to allotment of Channel 221A to Aurora. The record of this proceeding reflects that the Channel 224C1 allotment fails to place the required 70 dBu "city-grade coverage" over Ocracoke, and is thus substandard. The allotment cannot be reconciled with the Commission's clear directive, in enunciating the procedures ostensibly controlling the WAHL one-step upgrade application, that:

... all applicants using the one-step process must also demonstrate that a suitable site exists which would comply with allotment standards with respect to ... city-grade coverage.

As the Channel 224C1 allotment cannot be shown to satisfy the city-grade coverage requirement using the Commission's standard prediction methods, the adoption of the allotment was erroneous and should be set aside.

8. It is the Commission's well-established policy to delete substandard allotments. The Commission has not hesitated to order deletion of substandard allotments brought to its attention. See e.g. Pinckneyville, Illinois, 41 RR 2d 69, 70 (1977); Jacksonville, Pine Knoll Shores, and Harkers Island, North Carolina, 10 FCC Rcd 13159 (Chief, Policy & Rules Div., 1995) (deletion of allotment that would not provide the requisite city-grade coverage to the entire license community).

9. The Commission has also initiated procedures to delete substandard allotments on its own motion. Boone Biblical College, 15 FCC 2d 861, recon. denied, 19 FCC 2d 155 (1969) (rulemaking proceeding instituted by Commission to delete a substandard allotment); License Company, Inc., 11 FCC Rcd 1797 (Asst. Chief, Audio Services, Div., 1996) (substandard allotment referred to Allocations Branch for deletion).

10. In view of the foregoing precedent, there is no legal basis for the Ocracoke allotment to be sustained.

WHEREFORE, the premises considered, the Bureau is respectfully requested to grant the relief requested in CMC's reconsideration petition.

Respectfully submitted,

CONNER MEDIA CORPORATION

By Ellen S. Mandell
Peter Gutmann
Ellen S. Mandell
Its Attorneys

Pepper & Corazzini, L.L.P.
1776 K Street, N.W., Suite 200
Washington, D.C. 20006
(202) 296-0600

July 25, 1997

CERTIFICATE OF SERVICE

The undersigned, a secretary in the law firm of Pepper & Corazzini, L.L.P., does hereby certify that a true copy of the foregoing "ANSWER TO RESPONSE TO SUPPLEMENT TO PETITION FOR RECONSIDERATION" was sent on July 25, 1997, by U.S. first class mail, postage prepaid, to the following:

- * John A. Karousos, Esquire
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554
- * Peter H. Doyle, Esquire
Assistant Chief, Audio Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Vincent J. Curtis, Jr., Esq.
Fletcher Heald & Hildreth, P.L.C.
1300 North 17th Street - 11th Floor
Arlington, VA 22209

Frank R. Jazzo, Esquire
Fletcher Heald & Hildreth, P.L.C.
1300 North 17th Street - 11th Floor
Arlington, VA 22209

William J. Pennington, III, Esquire
P.O. Box 403
Westfield, Massachusetts 01086-0403

Gary S. Smithwick, Esquire
Smithwick & Belendiuk, P.C.
1990 M Street, N.W., Suite 510
Washington, D.C. 20036

Mark Van Bergh, Esquire
Roberts & Eckard, P.C.
1150 Connecticut Avenue, N.W. Suite 1100
Washington, D.C. 20036

A. Wray Fitch III, Esquire
Gammon & Grange, P.C.
8280 Greensboro Drive - 7th Floor
McLean, VA 22102-3807

Dina Erenado

* Hand delivery